

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 93-594-C - ORDER NO. 94-347 ✓

APRIL 20, 1994

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| IN RE: Application of Horry Telephone |) | ORDER DENYING |
| Cooperative, Inc. for Approval |) | PETITION FOR |
| of Area Calling Plan. |) | RECONSIDERATION |

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Petition for Reconsideration filed by AT&T Communications of the Southern States, Inc. (AT&T). For the reasons stated below, the Commission has determined that AT&T's Petition for Reconsideration must be denied.

AT&T sets forth two main arguments in favor of this Commission granting reconsideration of its original Order approving Horry Telephone Cooperative, Inc.'s (Horry's) Area Calling Plan (ACP or the Plan). First, AT&T alleges that Horry failed to justify the reasonableness of its proposed rate as required by S.C. Code Ann. §58-9-250. Second, AT&T submits that Horry has not shown that the proposed rates are just, reasonable and sufficient as required by S.C. Code Ann. §58-9-570.

AT&T alleges that Horry has failed to justify the reasonableness of the proposed rates of the Area Calling Plan. AT&T alleges that the proposed rates of the Area Calling Plan are discriminatory and are in violation of §58-9-250. Further, AT&T alleges that the Commission has not assessed the reasonableness of the proposed rates, has not addressed the discriminatory and

anticompetitive effects of the pricing, or evaluated the effects of the pricing on intraLATA competition.

In support of its position, AT&T cites S.C. Code Ann. §58-9-250 which provides that:

No telephone utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or corporation or subject any person or corporation to any unreasonable preference or disadvantage...

However, AT&T fails to quote the last portion of the statute, which the Commission believes governs in this instance. The last portion of §58-9-250 provides as follows:

Subject to the approval of the Commission, however, telephone utilities may establish classifications of rates and services and such classifications may take into account the conditions and circumstances surrounding the service, such as the time when used, the purpose for which used, the demand upon plant facilities, the value of the service rendered or any other reasonable consideration. The Commission may determine any question arising under this section. (Emphasis added.)

The Commission believes that the Horry ACP falls under the last part of the §58-9-250 which clearly allows the Commission to approve a new service taking into consideration the purpose for which the service is used. Further, the statute gives the Commission specific authority to determine any question arising under this section. Therefore, taking into account the factors mentioned above, the Commission holds that no unreasonable preference or difference in rate or service arises upon consideration of the Horry ACP.

AT&T also alleges that since the Horry ACP is priced lower than access charges that competition is essentially eliminated

through the use of the Horry ACP. According to the testimony presented at the hearing, the Horry ACP is an optional service which a customer may choose not to use. A customer may choose to utilize a chosen IXC to complete a call by dialing a 10XXX access code. AT&T acknowledges in its Petition for Reconsideration that a customer may access AT&T by dialing 10288. However, AT&T suggests that customers will choose not to access AT&T as the customer would incur higher charges to complete the call over AT&T than through the Horry ACP. AT&T did not assert that it could not offer its services in the market, only that it could not make a profit. The Commission is not convinced that AT&T cannot compete for intraLATA traffic in the Horry service area and further concludes that the benefits of the ACP outweigh the problems cited by the intervenors.

AT&T proposed in the hearing that the Horry ACP be approved conditioned on the elimination of all carrier common line charges on competitors' intraLATA calls originating in Horry service area and terminating within the Florence LATA. The Commission declines to adopt AT&T's proposal to eliminate the carrier common line component of access charges as the instant docket was not created to address the level of access charges but rather to address the Horry ACP. The Commission found in its prior Order that approval of the Horry ACP was in the public interest, and nothing has changed this conclusion.

AT&T also alleges that "the Commission has relied exclusively on Horry's 'sleight of hand' filing of its Area Calling Plan under the local rather than the toll section of its GSST to justify approval of the tariff." By virtue of S.C. Code Ann. §58-3-140(A)

(Supp. 1993), the Commission "is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State." This exclusive jurisdiction gives the Commission the authority to determine local calling routes and long distance calling routes. The Commission has the authority to reclassify, as was done in this Docket, long distance service into local service. Based on the evidence presented at the hearing, the Commission found that such reclassification was in the public interest and chose to reclassify certain long distance traffic in the Horry service area to local service. The Commission notes that a long distance carrier's certificate of public convenience and necessity does not entitle that carrier to compete over any specific route but is general in nature. Neither does that certificate guarantee that local calling will not be expanded, thereby reducing the scope of long distance calling in any given area. Therefore, the Commission may, as was done in this Docket, reclassify traffic upon a finding that such reclassification is in the public interest.

As its second argument, AT&T asserts that the Horry ACP as approved by the Commission violates the provisions of S.C. Code Ann. §58-9-570 (1976, as amended), which requires the Commission to "give due consideration to ... the reasonable operating expenses and other costs necessary to provide the service." The Commission would note that S.C. Code Ann. §58-9-570 applies to situations

where a "change in telephone rate" is presented to the Commission. See, S.C. Code Ann. §58-9-510 (1976). The Commission notes that no change in rate results from the present case, since the Horry ACP is a new service. However, the Commission would point out that the Commission did hear and consider evidence of cost in this matter. Horry presented testimony through witness Miller that the plan would result in an annual loss of approximately \$135,000 to Horry. While the Commission believes that this consideration would satisfy the criteria of S.C. Code Ann. §58-9-570, the Commission would note that it plans to monitor this matter and should the price of basic local service be threatened by the potential losses incurred, the Commission may take action to remedy any such resultant situation.


Therefore, the Commission holds that AT&T's Petition for Reconsideration must be rejected, and therefore denied, pursuant to the reasoning stated above. The Commission believes that the Horry ACP, as approved, is in the public interest. The Commission is charged with the responsibility of balancing competing positions and making an informed decision. In this case, the Commission believes that the evidence supports the approval of the Horry ACP as filed.

IT IS THEREFORE ORDERED THAT:

1. The Petition for Reconsideration filed by AT&T is hereby denied.

2. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)